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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC
SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
DOCKET NO.

In the Matter of the Suspension)
or Revocation of the License of)

JAMES J. LAVALLA, D.D.S.)

To Practice Dentistry in the)
State of New Jersey)

Administrative Action

DECISION AND FINAL ORDER

This matter was opened to the New Jersey State Board of Dentistry ("Board") upon the filing of an Order to Show Cause and Complaint on October 11, 1991, by Robert J. Del Tufo, Attorney General of New Jersey, Deputy Attorney General Anne Marie Kelly appearing, alleging in three counts that during a period from May 1989 to September 1990 respondent ordered and received from pharmaceutical wholesale vendors fourteen different controlled dangerous substances in a quantity over 3,000 dosage units including, inter alia, 300 tablets of percocet (a Schedule II controlled dangerous substance), 600 tablets of xanax (a Schedule IV controlled dangerous substance), 500 tablets of oxycodone (a Schedule II controlled dangerous substance), and 200 tablets of vicodin (a Schedule III controlled dangerous substance), for which respondent maintained no records relating to the dispensing of these drugs (Count I); that during the period from August 18, 1987 to June 18, 1990 respondent treated his wife Barbara Lavalla for a temporomandibular joint disorder solely through prescriptions for controlled dangerous substances in a quantity

in excess of 690 dosage units (Count II); that during the period from August 18, 1987 to June 18, 1990, respondent prescribed 38 prescriptions for controlled dangerous substances for Barbara Lavalla on dates for which the patient treatment record reflect no treatment (Count III).

The complaint further alleges as to all counts that on August 13, 1982, a complaint was filed with the Board against the respondent to which he entered a plea of non vult to the charges. On April 25, 1983, a Final Decision and Order was entered by the Board against the respondent finding that over a five year period of time respondent indiscriminately purchased, self-dispensed and ingested an extensive amount of Schedule II controlled dangerous substances, notably dexamyl. During the period of approximately 1976 through 1980 respondent purchased, self-dispensed and ingested 7,300 tablets of dexamyl, 1,700 spansules of dexamyl, 400 spansules of dexedrine, and 750 capsules of dextroamphetamine. At the peak of his drug use respondent self-dispensed and ingested twelve tablets or spansules of dexamyl per day. The 1983 Order suspended respondent's license to practice dentistry for a period of two years, of which 30 days were to be active and the balance suspended, assessed a civil penalty in the amount of \$2,500, imposed costs to the State in the amount of \$215.52, required respondent to submit to unannounced urine/blood testing, continue psychotherapy, submit to semi-annual psychiatric evaluations, and refrain from purchasing, prescribing or dispensing any and all controlled dangerous substances except

as directed by medical prescription for medical treatment.

On October 25, 1983, a second complaint was filed with the Board alleging that respondent had engaged in the practice of dentistry while his license was suspended pursuant to the prior Order. Respondent once again entered a plea of non vult to the charges. On April 13, 1984, a Final Decision and Order was entered by the Board placing the respondent on probation for the balance of the two year period of suspension and assessing an additional civil penalty in the amount of \$1,000.00.

The instant complaint against respondent alleges that his conduct violates N.J.S.A. 24:21-1 et seq., N.J.A.C. 8:65-5.3(b), and N.J.A.C. 8:65-5.11 concerning the dispensing of controlled dangerous substances; constitutes gross negligence or gross incompetence in violation of N.J.S.A. 45:1-21(c); constitutes repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d); constitutes professional misconduct in violation of N.J.S.A. 45:1-21(e); and constitutes indiscriminate prescribing or dispensing, and/or prescribing or dispensing without good cause in violation of N.J.S.A. 45:1-13.

On January 8, 1992, the respondent appeared before the Board to enter a plea of no contest to all of the allegations of the complaint. During that proceeding, respondent agreed and represented that the plea was equivalent to an admission of all of the allegations in the complaint.

A mitigation hearing was held on January 15, 1992, before the Board. Deputy Attorney General Anne Marie Kelly appeared on

behalf of the Attorney General. John Paul Dizzia, Esq., appeared for the respondent.

Board Members William Cinotti, D.D.S., Samuel Furman, D.D.S., Arnold Graham, D.D.S., Jerome Horowitz, D.D.S., Laurence Lefkowitz, D.D.S., Steven Candio, D.D.S., and Mrs. Evelyn Salkin join in this decision and order. Board Members Theresa Brisbin, R.D.H., Stephen Barbell, D.D.S., and Marvin Gross, D.D.S. did not participate in this matter.

PROCEDURAL HISTORY

A hearing on the complaint filed on October 11, 1991, was originally set down for a hearing before the Board on November 27, 1991. On that date respondent's prior counsel indicated respondent's willingness to settle the matter prior to a hearing in view of the fact that respondent did not intend to contest the allegations of the complaint. Counsel for the respondent engaged in negotiations with Deputy Attorney General Anne Marie Kelly and, after a period of time, a settlement agreement was reached and thereafter placed on the record on the same date. The terms of the settlement provided that respondent's license to practice dentistry would be revoked for a period of two years effective January 15, 1992. Prior to entertaining a petition for reinstatement, respondent would be required to successfully complete a mini-residency in the prescribing of controlled dangerous substances and participate in the Impaired Dentists Program sponsored by the New Jersey Dental Association. In the event the respondent was unable to effect a sale of his practice

by January 15, 1992, it was agreed that he could enter into a lease agreement with another dentist to continue the practice until March 31, 1992, so long as he did not engage in any practice of dentistry and did not share in any fees paid by patients during that period of time. The respondent further reserved the right to appear before the Board personally in order to request a reduction of the period of revocation, and it was agreed that the settlement agreement would be entered as stated in the event the Board determined not to reduce the length of the term of revocation. Counsel for the respondent indicated to the Board off the record that the appearance by the respondent would take approximately fifteen minutes. Accordingly, the appearance of the respondent in mitigation of disciplinary sanction was scheduled for December 4, 1991.

On December 4, 1991, an application was made by respondent's new counsel, John Paul Dizzia, Esq., to set aside the settlement agreement on the basis that respondent was assisted ineffectively by prior counsel and to permit the respondent to enter a plea of no contest to the allegations of the complaint. The respondent further requested a mitigation hearing which he stated would take at least two days to complete in order to present various witnesses. The respondent testified that he understood that if the settlement agreement was set aside, the Board could impose heightened sanctions beyond those to which he had previously agreed.

On December 4, 1991, the Board entered an Order denying the

application to set aside the settlement agreement based on its finding that the agreement represented a fairly compromised resolution of the complaint and that no good cause had been shown why it should not be honored and enforced as entered. The Board further ordered that respondent be permitted to appear personally before the Board and to speak on his own behalf in mitigation of the penalty imposed in the settlement agreement and to present affidavits of other individuals for mitigation purposes only. The mitigation hearing was scheduled for December 18, 1991.

Respondent took an interlocutory appeal of the Board's decision to the Appellate Division which was denied on December 23, 1991.

On January 8, 1992, the adjourned date of the mitigation hearing, counsel for the respondent requested that the Board reconsider its decision to enforce the settlement agreement, refer the matter to the Office of Administrative Law, stay the effective date of the revocation, and enter an Order granting a stay pending appeal of the Board's decision. Counsel indicated Dr. Lavalla's continued willingness to enter into an agreement wherein he would cease and desist from prescribing controlled dangerous substances, participate in the mini-residency in the prescription of controlled dangerous substances, and participate in the Impaired Dentists Program. Subsequent to reconsideration in executive session, the Board announced in public session its decision to vacate the settlement agreement, permit the respondent to enter a plea of no contest to the complaint, and grant a full day mitigation hearing at which the respondent would

be permitted to produce witnesses to testify on his behalf. The Board further ordered that the matter would not be transferred to the Office of Administrative Law. The participating Board members expressed their ability to proceed as impartial and unbiased decision makers for the purpose of providing the respondent with a fair mitigation hearing.

The mitigation hearing was held on January 15, 1992. John Paul Dizzia, Esq., appeared on behalf of the respondent. Deputy Attorney General Anne Marie Kelly appeared on behalf of the Attorney General.

DISCUSSION

The following documentary items are part of the record in this matter:

- R-1 Letter of John Paul Dizzia, Esq. dated January 2, 1992 accompanied by 22 certified letters on behalf of the respondent.
- R-2 Certified letter of Charles Sgroi, D.M.D. dated January 5, 1992.
- R-3 Certified letter of Father Steven J. Vlahos dated January 7, 1992.
- R-4 Certification of Gordon Sunkett dated December 9, 1991.
- R-5 Certification of James J. Lavalla, D.D.S. dated December 7, 1991, with Exhibits A, B and C.
- R-6 1991 Estimated Business Expenses of the respondent as certified by Michael J. Magnotta, Jr., P.C.
- B-1 Certification of Kathy Rohr, D.A.G. dated December 20, 1991, with certifications of Board members Furman, Graham, Horowitz, Lefkowitz,

Salkin, Cinotti and Gross.

- 8-1 Complaint against respondent dated October 11, 1991.
- 8-2 Letter of Ernest F. Rosato, M.D. concerning Barbara Lavalla dated June 17, 1988.

The Board also included in the record all correspondence and briefs of Mr. Dizzia and D.A.G. Kelly, all prior pleadings and Board Orders entered in regard to the respondent, and the transcripts of all Board proceedings concerning the respondent.

The respondent testified on his own behalf before the Board. He stated that he realized that he made a mistake by ordering and dispensing the controlled dangerous substances, but he indicated that his conduct did not represent a recurrence of substance abuse. The respondent attributed his conduct to the fact that his wife, Barbara Lavalla, suffered from severe medical problems during the period of approximately June 1987 through the summer of 1990 to which he responded as a husband rather than as a professional. The respondent testified that he began prescribing percocet for Mrs. Lavalla in May 1988 as a result of continuing pain which she suffered after a series of medical problems and surgeries.

It appears that Barbara Lavalla underwent a gall bladder operation in June 1987 during which a bile duct was allegedly punctured causing severe back pain and fever post-operatively. In August 1987 she was readmitted to the hospital with pain, was prescribed controlled dangerous substances and left the hospital

wearing an external bag for the collection of draining bile. During the period September 1987 through March 1988 she suffered from continuing pain and thereafter the respondent began prescribing percocet for her. In March 1988 Mrs. Lavalla was readmitted to the hospital, underwent further surgery, and received a contaminated IV which resulted in various post-operative complications. In April 1988 she was released from the hospital and was allegedly prescribed demerol, morphine and percocet. Thereafter she refused to let another medical doctor touch her, and she filed a malpractice action against the hospital and various physicians. At that point she turned to her husband, and he started prescribing and dispensing various controlled dangerous substances to her.

The respondent testified that he regretted not seeking further medical care for his wife. He stated that she was now completely recovered and was not taking any medication whatsoever. He stated that he recognizes that a penalty must be imposed, but he advised the Board that a two year revocation would end his dental practice. The respondent informed the Board that he had been in private practice for more than twenty-five years and felt that he was a good and caring dentist.

On cross-examination the respondent admitted that he did not advise Mrs. Lavalla's medical doctors that he was prescribing controlled dangerous substances for her even though she continued to see various physicians after he began prescribing and dispensing such drugs to her. He admitted that Mrs. Lavalla

consulted with a Dr. Rosato, a Dr. Francioni, and a Dr. Block subsequent to May 1988, and he did not inform any of these medical doctors that he was providing Mrs. Lavalla with narcotic medications.

In regard to his own substance abuse, the respondent admitted that he was addicted to amphetamines during the period 1972 to 1981. However, in 1979 the respondent appeared before the Board and testified that he was under treatment for his amphetamine abuse and was drug free at that time, a statement which apparently was untrue. The respondent further testified that in the period August to September 1989 he began self-dispensing percocet and during that period he personally consumed approximately 35 tablets of percocet. He testified that all of the other narcotics listed in the complaint, both those prescribed for Mrs. Lavalla and ordered from pharmaceutical wholesale vendors were prescribed and dispensed to Mrs. Lavalla.

During questions by the Board the respondent testified that he consulted Roger Daniels, M.D., on September 20, 1989, in regard to his use of percocet, a Schedule II controlled dangerous substance. He advised the Board that during the period August to September 1989 he consumed one to two tablets a day which he took from his office supply. Dr. Daniels prescribed xanax for anxiety during the period September 1989 to November 1989 and again in May and June 1990. Upon further questioning the respondent admitted that he also consumed approximately fifty tablets of xanax from among the units he ordered and kept in the office.

Fifty tablets of xanax represents approximately a seventeen day supply of the medication if taken in accordance with dosage recommendations. The respondent testified that he did not advise Dr. Daniels that he took these additional drugs without prescription.

Upon further questioning the respondent admitted that he also consumed librium during the period August to September 1989 approximately seven or eight times. The remainder of the librium which he ordered was dispensed to Mrs. Lavalla.

The respondent also testified that he withdrew from amphetamines during his thirty day period of suspension of licensure in 1983. At that time he entered into a physical fitness program, but he did not consult with any professionals. He did not participate in any support groups, and he did not submit to any urine monitoring. He has never attended a drug counseling program, and he has never submitted to urine monitoring at any time.

In October 1990 respondent and his wife attended a Sterling Management course in California. Respondent stated that this is a self-improvement program based on the theory of dianetics, an apparent offshoot of the program espoused by Ron Hubbard. He and Mrs. Lavalla continue to attend life improvement courses offered in the Philadelphia area in connection with the dianetics program.

Barbara Lavalla, respondent's wife, testified on behalf of her husband. She advised the Board that she and Dr. Lavalla had

been married for 28 years and had two children, aged 27 and 22. She has been employed for approximately one year as a full time office manager in the dental practice of her husband. Mrs. Lavalla testified in regard to the estimated monthly expenses of the practice in accordance with the certification of their accountant (R-6). She testified that in the event her husband has his license to practice dentistry suspended or revoked, the family will have no other means of income. She advised the Board that they currently have a large mortgage on their family home with a monthly payment of \$1,700.00. In addition, their daughter is in college, and her tuition costs amount to approximately \$15,000.00 per year.

Mrs. Lavalla recounted her medical history consistent with the account given by the respondent during his testimony. However, Mrs. Lavalla testified that she personally consumed all of the controlled dangerous substances listed in the complaint, both those which were specifically prescribed for her by the respondent as well as those which were ordered and purchased by the respondent in bulk. In spite of the massive amounts of narcotics which Mrs. Lavalla would have had to consume during the eighteen month period represented by the narcotics listed in the complaint, she testified that she merely stopped using the drugs in or about the summer of 1990 and that she did not feel that she was ever addicted and did not suffer from any withdrawal symptoms. She did not consult with any professionals or enter into any drug programs in connection with her cessation of

narcotics use.

Upon cross-examination Mrs. Lavalla admitted that although she had testified that she asked her husband for the narcotics because she had pain, when she consulted with other doctors subsequent to receiving such medications from her husband, she did not advise them of her pain and she did not advise them that her husband was prescribing and/or dispensing controlled dangerous substances to her.

Patients Raymond Medeiros, Rita Murphy, Father Wayne Smith, Jane Ciminera, Fletcher Buckley, Vincent Lowe, and Carlos Enriques, M.D. testified on behalf of the respondent. All of these patients had been treated by the respondent for a number of years ranging from five years to more than twenty-five years. In most cases their entire families also were treated by the respondent, and they were all very complimentary in regard to the respondent's dental ability as well as his caring and compassionate manner with patients. Of those patients who had been treated by Dr. Lavalla during the earlier period when he was addicted to amphetamines, none of the patients were aware at that time that Dr. Lavalla had a drug abuse problem. All of the patients testified that they were now aware of the prior drug abuse problem and that they also had been made aware of the allegations of the complaint concerning the dispensing and/or prescribing of excessive amounts of controlled dangerous substances. They all stated that this information did not affect their opinion of him as a dentist.

Charles Sgroi, D.D.S. , testified on behalf of the respondent. He informed the Board that he has been a general practitioner in New Jersey for approximately fifteen years. Last fall he was out of his practice for approximately five weeks as a result of surgery. The respondent covered his practice for him and charged no fee for his donated time. Dr. Sgroi was impressed with Dr. Lavalla's willingness to travel from a distance to his office and to provide this service free of charge. He further felt that his patients were well treated, and the dental work which he observed in his patients when he returned to his practice was competently performed. Dr. Sgroi met Dr. Lavalla for the first time on October 23, 1991, subsequent to the filing of the complaint with the Board of Dentistry. Dr. Lavalla did not advise him of the complaint nor did he advise him of the current allegations or of his prior drug abuse problems.

Alfred Valle, the brother of Barbara Lavalla and respondent's brother-in-law, also testified on behalf of the respondent. He advised the Board that he was also a patient of the respondent together with his wife and two children. He stated that he was very close to respondent's family and that he had the highest regard for the respondent. However, upon cross-examination by the Deputy Attorney General, Mr. Valle admitted that until being advised during the course of this questioning he had no knowledge that his brother-in-law suffered from an addiction to amphetamines for almost a ten year period, and he had no knowledge of the current allegations or the fact that the

respondent admitted to dispensing and/or prescribing excessive amounts of controlled dangerous substances to his sister Barbara Lavalla.

The parties stipulated to the fact that Dr. Frederick Rotgers indicated that the respondent would be a candidate for participation in the Impaired Dentists Program and could be monitored by that program for purposes of rehabilitation. However, Dr. Rotgers had not yet conducted an evaluation of the respondent nor had he ever met with him.

In closing argument Mr. Dizzia also requested that the Board stay its decision when rendered in contemplation of an appeal.

FINDINGS OF FACT

Based on the evidence, the Board makes the following findings of fact:

1. Respondent James J. Lavalla, D.D.S. is and, at all times pertinent hereto, was a dentist licensed in the State of New Jersey.
2. On or about January 8, 1992, respondent entered a plea of no contest to the allegations of the Administrative Complaint filed with the Board on October 11, 1991. Accordingly, the Board finds as facts and incorporates herein by reference all of the allegations contained in the complaint. (A copy of the complaint is attached hereto as Exhibit "A".)
3. Respondent prescribed and dispensed to his wife Barbara Lavalla excessive quantities of a variety of controlled dangerous substances over a period of approximately eighteen months without

dental cause and outside of the scope of his prescription privileges as a licensed dentist in this State. These narcotic medications included not only pain control medications but also narcotics for cough suppression, muscular discomfort, a decongestant, nausea control, and anxiety control. This prescribing and dispensing posed a distinct and discernible danger of substantial magnitude to the health and safety of Barbara Lavalla.

4. Respondent self-dispensed and personally consumed approximately thirty-five percocet tablets, a Schedule II controlled dangerous substance, approximately fifty xanax tablets, a Schedule IV controlled dangerous substance, and an undisclosed amount of librium, a Schedule IV controlled dangerous substance, all without dental cause and outside of respondent's prescription privileges as a dentist.

5. Respondent's volunteering to perform community service both for the New Jersey Dental Association and for the Drug Free Youth Center in Camden occurred after the filing of the complaint against the respondent for the suspension or revocation of his license to practice dentistry and in neither case did he advise the recipients of his services of the pending charges.

6. The Board further finds that despite respondent's assertions that the current allegations do not represent a recurrence of substance abuse, his admitted resort to narcotics during a time of family stress indicates that although he may have recovered from his amphetamine addiction in the early 1980s,

he has continued to abuse substances personally and also to unlawfully and improperly dispense them to his wife. In addition, neither the respondent nor his wife have ever participated in a substance abuse program.

7. The Board finds incredible the testimony of Mrs. Lavalla that she personally consumed all of these medications and then simply stopped using them of her own accord without experiencing any withdrawal symptoms and without the assistance or support of any professional consultant or program. In this regard the Board finds that Mrs. Lavalla's credibility also is directly affected by the fact that if the respondent loses his license to practice dentistry for any period of time, the family would also lose its primary source of income.

CONCLUSIONS OF LAW

With regard to Count I the Board finds that respondent's conduct in failing to maintain records relating to the dispensing of controlled dangerous substances which he ordered and received from pharmaceutical wholesale vendors during the period from May 1989 to September 1990 violates N.J.S.A. 24:21-1 et seq., N.J.A.C. 8:65-5.3(b), N.J.A.C. 8:65-5.11, constitutes gross negligence or gross incompetence in violation of N.J.S.A. 45:1-21(c), repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d), and professional misconduct in violation of N.J.S.A. 45:1-21(e).

With regard to Count II the Board further finds that respondent's extended treatment of his wife Barbara Lavalla's

pain and/or other medical disorders by the prescription of controlled dangerous substances constitutes gross negligence or gross incompetence in violation of N.J.S.A. 45:1-21(c), repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d), and professional misconduct in violation of N.J.S.A. 45:1-21(e).

With regard to Count III, the Board further finds that respondent's prescribing, separately or in combination approximately thirty-eight prescriptions for controlled dangerous substances for non-dental cause constitutes gross malpractice, gross negligence or gross incompetence in violation of N.J.S.A. 45:1-21(c), repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d), professional misconduct in violation of N.J.S.A. 45:1-21(e), and, with respect to the prescribing of controlled dangerous substances singly or in combination with other drugs, indiscriminate prescribing or dispensing, and/or prescribing or dispensing without good cause in violation of N.J.S.A. 45:1-13.

In view of the respondent's own admissions concerning personal consumption of controlled dangerous substances including, but not limited to, percocet, xanax and librium, outside of the scope of his privilege to prescribe as a licensed dentist in this State, the Board concludes that such acts constitute professional misconduct. In fact, respondent employed fraudulent means to obtain controlled dangerous substances since such substances were intended for personal consumption or for

dispensing to his wife and were not for utilization in the practice of dentistry. Such conduct represents a gross abuse of respondent's license to practice dentistry. Such conduct is even more egregious when it involves a licensed health care professional who has been granted one of the State's most trusted privileges - the authority to prescribe and dispense controlled dangerous substances.

The Board finds that respondent's status as a repeat offender is one of the most disturbing aspects of this case. This is the second time that the respondent has come before the Board for the unauthorized prescribing, dispensing, and consumption of controlled dangerous substances. When this matter was considered by the Board in 1983, it imposed certain terms and conditions on the respondent's ability to retain his license to practice dentistry. The respondent violated the terms of that Order. (In addition to his engaging in the practice of dentistry while his license was suspended for a thirty day period, his testimony during the mitigation hearing indicated that he also failed to consult with any professionals concerning drug counseling programs, he did not attend any support groups, and he never submitted to urine monitoring.) The Board deems respondent's failure to comply with the terms of that Order to constitute professional misconduct in violation of N.J.S.A. 45:1-21(e).

Rather than a mitigating factor, the Board finds as an aggravating circumstance the fact that respondent is a health professional and, as such, is cognizant of the dangers of

addiction and other negative consequences and side effects resulting from the consumption of controlled dangerous substances without medical cause. However, the Board recognizes as a mitigating factor that respondent has had a long career as a dentist, and his competence in regard to dental treatment has not been questioned. Nor has there been any evidence to indicate that the respondent has ever practiced dentistry while under the influence of any narcotic substance.

The Board thoroughly considered the record before it. Notwithstanding the recommendations and praise which respondent has received from a number of patients who testified on his behalf as well as those who provided certifications, the Board must take into account respondent's admitted violation of the laws of this State concerning the dispensing and distribution of controlled dangerous substances in such substantial quantities. Moreover, the Board must take into consideration respondent's repeated failure to comply with the laws of this State and to comport himself within the scope of his license to practice dentistry.

The Board cannot view the offenses committed by the respondent as anyway mitigated by the medical circumstances of Mrs. Lavalla, no matter how extreme. These offenses are extremely serious, and they have profound impact on the Board's duty to protect the safety and welfare of the public. Although there is no evidence that the respondent has placed any patient at risk of harm, he has clearly harmed himself and seriously

jeopardized the health and safety of his wife through indiscriminate prescribing and dispensing of narcotics. Drug diversion by professionals is a serious problem in this State, and the Board is duty bound to act to deter such unlawful conduct by its licensees. This is a case requiring serious disciplinary sanction.

Although certain aspects of respondent's case evoke a certain amount of sympathy, the fact that respondent is a repeat offender causes the Board to view this matter with grave concern and to conclude that leniency is not appropriate at this time. The Board also is struck by the fact that although there is recognition by the respondent that he should not have prescribed and/or dispensed these narcotics, there is no recognition that his conduct posed a clear threat to the welfare of his wife as well as to his patients during the period when he personally consumed such narcotics. To that extent, the Board concludes that the respondent cannot be trusted to recognize his own limitations or exercise any internal controls or appropriate judgment in the event of a personal relapse or a relapse by his wife.

The authority to practice dentistry in the State of New Jersey is a privilege not to be taken lightly. As unfortunate as respondent's circumstances may have been, the Board cannot let any sympathy whatsoever for the licensee outweigh its greater duty to assure confidence in the integrity and competence of licensees to those individuals who seek dental services.

IT IS, THEREFORE, ON THIS 5TH DAY OF FEBRUARY
1992,

ORDERED THAT:

1. The license of respondent, James J. Lavalla, D.D.S., to practice dentistry in the State of New Jersey shall be and is hereby revoked effective thirty (30) days from service of the within Order upon counsel for the respondent. Respondent shall immediately thereafter surrender his wall certificate and license to the Board.

2. The Board shall not entertain any petition for reinstatement of the license to practice dentistry of respondent prior to one (1) year from the filing date of this Order.

3. During the period of time in which respondent's dentistry license remains revoked, respondent shall not own or otherwise maintain a pecuniary or beneficial interest in a dental practice, or function as a manager, proprietor, operator or conductor of a place where dental operations are performed, or otherwise practice dentistry within the meaning of N.J.S.A. 45:6-19.

4. Respondent shall be assessed a civil penalty in the amount of Five Thousand (\$5,000.00) Dollars. Said penalty shall be submitted by certified check or money order made payable to the State of New Jersey to the Board of Dentistry at 124 Halsey Street, Newark, New Jersey 07102 no later than sixty (60) days after the filing date of the within Order.

5. Respondent shall be assessed the costs to the State for

these proceedings. The amount of costs shall be provided to the respondent in writing by certification of the Executive Director of the Board of Dentistry. Upon receipt of such affidavit, respondent shall submit a certified check or money order in the stated amount of costs made payable to the State of New Jersey no later than thirty (30) days after receipt of the affidavit of the Executive Director.

6. Prior to consideration of any application for reinstatement of licensure, respondent shall have the burden to demonstrate to the Board that he is personally fit and competent to resume the practice of dentistry. Prior to making such application, the respondent shall, at a minimum, be prepared to demonstrate the following:

- a. Respondent shall successfully complete the mini-residency entitled "The Proper Prescribing of Controlled Dangerous Substances", offered by Dr. William Vilensky and sponsored by the University of Medicine & Dentistry of New Jersey at the Robert Wood Johnson Medical School in Camden, New Jersey. Respondent shall be required to complete both the didactic and the clinical portions of this course. Upon completion of the course, respondent shall present to the Board, in writing, a certificate of successful completion of the course signed by Dr.

Vilensky or his designee.

- b. Respondent shall submit to an evaluation by Dr. Frederick Rotgers of the Impaired Dentists Program. He shall cause Dr. Rotgers to submit a written evaluation to the Board setting forth a comprehensive evaluation of the respondent and making recommendations concerning participation in the Impaired Dentists Program including such monitoring procedures as therapy, support groups, random unannounced urine monitoring, and other rehabilitative programs and procedures as recommended and/or required.
- c. Immediately prior to application for reinstatement, respondent shall submit to a psychological evaluation by Frank Dyer, Ph.D. upon referral by the Board of Dentistry.

7. Respondent shall be responsible for the fees of any of the consultants as required herein for evaluations and reports. Respondent shall cause and permit the staff or other designee of the Impaired Dentists Program or other consultants to disclose to the Board any evaluations made of the respondent as well as any recommendations and any other pertinent information. This shall include advising the Board of any and all programs in which

respondent engages, including urine monitoring, and keeping the Board advised as to respondent's progress and successful completion on an on-going basis.

8. In the event respondent petitions the Board for reinstatement of his license to practice dentistry in the State of New Jersey, he shall be made to appear personally before the Board, and he shall have the burden to demonstrate to the satisfaction of the Board that he is capable of discharging the functions of a licensee in a manner consistent with the public's health, safety and welfare.

9. Respondent's application for a stay of this Order is denied.



William R. Cinotti, D.D.S.
President
State Board of Dentistry

RECEIVED AND FILED
WITH THE
N.J. BOARD OF DENTISTRY
ON 10-11-91 cm

ROBERT J. DEL TUFO
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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
DOCKET NO.

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

JAMES J. LAVALLA, D.D.S.

TO PRACTICE DENTISTRY IN THE
STATE OF NEW JERSEY

Administrative Action

COMPLAINT

ROBERT J. DEL TUFO, ATTORNEY GENERAL OF NEW JERSEY, by Anne Marie Kelly, Deputy Attorney General, with offices located at the Division of Law, 124 Halsey Street, 5th Floor, Newark, New Jersey 07102, on the basis of information and belief, by way of Complaint says:

ALLEGATIONS COMMON TO ALL COUNTS

1. Complainant, Attorney General of New Jersey, is charged with enforcing the laws of the State of New Jersey pursuant to N.J.S.A.52:17A-4(h) and N.J.S.A.45:1-14 et seq.

2. The New Jersey State Board of Dentistry is charged with the responsibility of regulating the practice of dentistry in New Jersey pursuant to N.J.S.A.45:6-1 et seq.

3. Respondent, James J. Lavalla, D.D.S., with office address at 4003 Greentree, Executive Campus, Marlton, New Jersey 08053, License No. 7808, has been licensed to practice dentistry in the State of New Jersey at all times pertinent hereto.

4. On August 13, 1982 a Complaint had been filed before the New Jersey State Board of Dentistry seeking the suspension or revocation of the license to practice dentistry of Respondent, James J. Lavella, D.D.S. Respondent entered a plea of non vult to the charges in the Complaint. On April 25, 1983 a Final Decision and Order was entered by the New Jersey State Board of Dentistry against Respondent Lames J. Lavella, D.D.S. which found that over a five year period of time Respondent indiscriminately purchased, self-dispensed and ingested an extensive amount of Schedule II Controlled Dangerous Substances, notably Dexamyl. More particularly during a four month period of calendar year 1976 respondent purchased, self-dispensed and ingested 700 tablets of dexamyl and 150 spansules of Dexamyl #1. During a nine month period of 1977 respondent purchased, self-dispensed and ingested 1,700 tablets of Dexamyl, 200 spansules of Dexamyl #1 and 50 spansules of Dexamyl #2. During a six month period of 1978 Respondent increased the amounts to 1,900 tablets of Dexamyl and 250 spansules of Dexamyl #2. During a six month period of 1979 respondent maintained this increased dosage with 1,400 tablets of Dexamyl, 450 spansules of

2/6/90	100 caps	Dalmane 30 mg.	I.D.E.
2/6/90	100 tabs	Xanax .25 mg.	I.D.E.
2/6/90	40 tabs	Drixoral	I.D.E.
2/6/90	100	Idenal w. codeine	I.D.E.
2/6/90	1 pt.	Paregoric USP	I.D.E.
2/28/90	100 tabs	Percocet	I.D.E.
2/28/90	100 caps	Restoril 15 mg.	I.D.E.
4/9/90	100 caps	Xanax .25 mg.	I.D.E.
4/9/90	100 tabs	Vicodin	I.D.E.
6/18/90	100 tabs	Vicodin	I.D.E.
7/2/90	100 tabs	Xanax .25 mg.	I.D.E.
7/2/90	100 tabs	Vicodin	I.D.E.
7/23/90	100 tabs	Xanax	Shein
9/21/90	100 tabs	Xanax .25 mg.	Shein

At all times pertinent to this Complaint APAP w. codeine has been a Schedule III Controlled Dangerous Substance as defined in N.J.S.A. 24:21-7 and N.J.A.C. 8:65-10.3.

At all times pertinent to this Complaint Dalmane has been a Schedule IV Controlled Dangerous Substance as defined in N.J.S.A. 24:21-8 and N.J.A.C. 8:65-10

At all times pertinent to this Complaint Diazepam has been a Schedule IV Controlled Dangerous Substance defined in N.J.S.A. 24:21-8 and N.J.A.C. 8:65-10.4.

At all times pertinent to this Complaint Percocet has been a Schedule II Controlled Dangerous Substance as defined in N.J.S.A. 24:21-6 and N.J.A.C. 8:65-10.2.

At all times pertinent to this Complaint Paregoric has been a Schedule III Controlled Dangerous Substance as defined in N.J.S.A. 24:21-7 and N.J.A.C. 8:65-10.3.

At all times pertinent to this Complaint Hycodan has been a Schedule III Controlled Dangerous Substance as defined in N.J.S.A. 24:21-7 and N.J.A.C. 8:65-10.3

At all times pertinent to this Complaint Librium has been a Schedule IV Controlled Dangerous Substance as defined in N.J.S.A. 24:21-8 and N.J.A.C. 8:65-10.4.

At all times pertinent to this Complaint Oxycodone HCL w/APAP has been a Schedule II Controlled Dangerous Substance as defined in N.J.S.A. 24:21-6 and N.J.A.C. 8:65-10.2

At all times pertinent to this Complaint Acetamin w. codeine has been a Schedule III Controlled Dangerous Substance as defined in N.J.S.A. 24:21-7 and N.J.A.C. 8:65-10.3.

At all times pertinent to this Complaint Xanax has been a Schedule IV Controlled Dangerous Substance as defined in N.J.S.A. 24:21-8 and N.J.A.C. 8:65-10.4.

At all times pertinent to this Complaint Idenal w/codeine has been a Schedule III Controlled Dangerous Substance as defined in N.J.S.A. 24:21-7 and N.J.A.C. 8:65-10.3.

At all times pertinent to this Complaint Dalmane has been a Schedule IV Controlled Dangerous Substance as defined in N.J.S.A. 24:21-8 and N.J.A.C. 8:65-10.4.

At all times pertinent to this Complaint Restoril has been a Schedule IV Controlled Dangerous Substance as defined in N.J.S.A.

24:21-8 and N.J.A.C. 8:65-10.4.

At all times pertinent to this Complaint Vicodin has been a Schedule III Controlled Dangerous Substance as defined in N.J.S.A. 24:21-7 and N.J.A.C. 8:65-10.3.

2. Respondent failed to maintain records relating to the dispensing of these drugs.

3. The foregoing conduct violates N.J.S.A. 24:21-1 et seq., and N.J.A.C. 8:65-5.3(b), N.J.A.C. 8:65-5.11, constitutes gross negligence or gross incompetence in violation of N.J.S.A. 45:1-21(c), repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d) and professional misconduct in violation of N.J.S.A. 45:1-21(e).

COUNT II

1. Complainant repeats the allegations of the previous count as if fully set forth herein.

2. From August 18, 1987 to June 18, 1990 Respondent treated patient Barbara Lavella (Respondent's wife) for temporomandibular joint disorder. His only course of treatment was prescriptions of controlled dangerous substances in excess of 690.

3. Respondent's extended treatment of patient Lavella's temporomandibular joint disorder by the prescription of CDS only constitutes gross negligence or gross incompetence in violation of N.J.S.A. 45:1-21(c), repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d) and professional misconduct in violation of N.J.S.A. 45:1-21(e)

COUNT III

1. Complainant repeats the allegations of the previous counts as if fully set forth herein.

2. From August 18, 1987 to June 18, 1990, Respondent prescribed 38 prescriptions for controlled dangerous substances to Barbara Lavalla (Respondent's wife) as follows:

<u>Prescription Date</u>	<u>Medication</u>
8/18/87	Percocet & Robaxin
1/21/88	35 Percocet
5/24/88	35 Percocet
6/2/88	35 Percocet
7/6/88	35 Percocet
7/12/88	35 Tylox
8/15/88	25 Fiorinal w/codeine #3
8/25/88	30 Percocet
9/12/88	30 Hycodan
9/12/88	35 Percocet
9/27/88	30 Hycodan
10/6/88	35 Percocet
10/17/88	35 Percocet
11/03/88	30 Fiorinal w/COD #3*
11/14/88	35 Percocet
11/15/88	Perocet*
11/25/88	35 Percocet
12/5/88	Percocet*

12/11/88	35 Percocet
1/1/89	35 Percocet
2/1/89	35 Percocet
2/7/89	35 Percocet
2/22/89	35 Percocet
3/7/89	35 Percocet
3/24/89	35 Percocet
6/5/89	15 Percocet
6/26/89	35 Percodan
7/16/89	15 Percocet
8/27/89	20 Librium
9/2/89	20 Librium
12/18/89	20 Fiorinal w/COD #3
12/27/89	20 Fiorinal w/COD #3
1/26/90	20 Percocet
4/90	Tylenol w/Codeine*
4/30/90	30 Vicodin
5/14/90	25 Vicodin*
6/6/90	Percocet*
6/18/90	Percocet*

*Listed in patient's chart.

3. Respondent's records on patient Lavalla do not reflect any treatment rendered during the dates of issuance of 32 prescriptions listed in this Count.

4. The foregoing prescribing, separately or in combination, constitutes gross malpractice, gross negligence or gross incompetence

in violation of N.J.S.A.45:1-21(c), repeated acts of negligence, malpractice or incompetence in violation of N.J.S.A. 45:1-21(d), professional misconduct in violation of N.J.S.A.45:1-21(e), and, with respect to the prescribing of Controlled Dangerous Substances singly or in combination with other drugs, indiscriminate prescribing or dispensing, and/or prescribing or dispensing without good cause in violation of N.J.A.C. 45:1-13.

WHEREFORE, it is respectfully demanded that the State Board of Dentistry:

1. Suspend or revoke the license of James J. Lavalla, D.D.S. to practice dentistry in the State of New Jersey pursuant to N.J.S.A. 45:1-21 and N.J.S.A. 45:6-1 et seq.
2. Assess such monetary penalties as may be appropriate and allowed by law pursuant to N.J.S.A. 45:1-22.
3. Order payment of costs for use of the State of New Jersey pursuant to N.J.S.A. 45:1-25.
4. Order such other and further relief as the Board may deem just and equitable in this matter pursuant to N.J.S.A.45:1-22.

ROBERT J. DEL TUFO
ATTORNEY GENERAL OF NEW JERSEY

By: 
Anne Marie Kelly
Deputy Attorney General

Dated:

10/11/91